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FILED: 12/14/82

Attorney for Defendant, GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF )  
CALIFORNIA, a California )  
corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
GERALD ARMSTRONG, DOES 1 )  
through 10, Inclusive, )  
 )  
Defendants. )  
 )

CASE NO. C 420 153  
NOTICE OF MOTION AND MOTION  
FOR LEAVE TO FILE AN AMENDED  
ANSWER; DECLARATION OF  
BRUCE M. BUNCH; AND MEMORANDUM  
OR POINTS AND AUTHORITIES IN  
SUPPORT THEREOF (C.C.P. §473)  
DATE: January 4, 1983  
TIME: 9:00 A.M.  
DEPT: 83

TO: PLAINTIFF, CHURCH OF SCIENTOLOGY OF CALIFORNIA, AND THEIR  
RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, that on January 4, 1983, at 9:00 A.M.  
or as soon thereafter as counsel may be heard, in Department 83  
of the above entitled Court located at 111 North Hill Street,  
Los Angeles, California 90012, Defendant, GERALD ARMSTRONG will  
move the Court to allow him to file a First Amended Answer to  
Complaint.

This motion is made on the ground that the defense of  
unclean hands is a valid and viable defense to an action for  
injunction, that said defense was apparently inadvertently

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1 stricken by the Court in its ruling on Plaintiff's Motion to  
2 Strike; and, that justice and fairness would be promoted by  
3 allowing the Answer to be amended to include this defense.

4 DATED: December 13, 1982

5 CONTOS & BUNCH

6  
7 By BRUCE M. BUNCH

8 BRUCE M. BUNCH  
9 Attorney for Defendant  
10 GERALD ARMSTRONG  
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I, BRUCE M. BUNCH, DECLARE:

I am an attorney at law duly authorized to practice before all of the Courts in the State of California, and am a partner in the law firm of Contos & Bunch, attorneys of record for GERALD ARMSTRONG, Defendant herein.

The Complaint of Plaintiff, CHURCH OF SCIENTOLOGY, seeks among other things, the equitable remedy of injunction against GERALD ARMSTRONG. The original Answer filed on behalf of Mr. ARMSTRONG contained a First Affirmative Defense for unclean hands. Said Affirmative Defense contained a good deal of factual information, which this Court found to be extraneous.

On November 9, 1982, Plaintiff's Motion to Strike Defendant, ARMSTRONG'S Answer and Affirmative Defenses to Plaintiff's Complaint was heard before this Court. That Motion sought to strike numerous allegations, paragraphs, and defenses. On this Motion, the Court only struck the First Affirmative Defense of Defendant's Answer.

The original First Affirmative Defense contained extensive extraneous factual material which was basically irrelevant to the proper assertion of the defense of unclean hands. However, it is Hornbook Law that the defense of unclean hands is a valid defense to a cause of action for injunctive relief. Unless Defendant herein is allowed to amend the Answer to reassert, properly this time, the Affirmative Defense of unclean hands, that defense will be lost to him. It is therefore, respectfully submitted, that to allow such an amendment would be in the

Furtherance of justice, and that therefore this Motion should be granted. Plaintiff can demonstrate absolutely no prejudice if this Motion is granted in that this matter has just commenced the litigation process and Plaintiff will have plenty of time to conduct discovery in connection with this claim.

Based upon the foregoing reasons, it is respectfully requested that this Court grant this Motion and allow this Defendant, GERALD ARMSTRONG, leave to amend his Answer by filing the attached proposed First Amended Answer to Complaint. A true and correct copy of the proposed Amended Answer is hereto as Exhibit "A" and incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of December, 1982, at Woodland Hills, California.

BRUCE M. BUNCH

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BRUCE M. BUNCH

MEMORANDUM OF POINTS AND AUTHORITIES

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THIS COURT MAY ALLOW AN AMENDMENT TO  
ANY PLEADING ON ANY TERMS WHICH THE  
COURT, IN ITS DISCRETION, DEEMS TO  
BE JUST.

California Code of Civil Procedure, §473.

Code Section 473 specifically allows the Court to exercise its discretion in considering whether or not to allow a party to amend any pleading. The general policy of the law in this State is to allow great liberality in amendment of pleadings prior to trial, and even during trial itself, so as to allow the parties to properly present their causes of action or defenses thus furthering justice by insuring a trial on the true merits of the case. Atchinson, Topeka & Santa Fe Railroad Company vs. Superior Oil Company, 243 Cal. App. 2d 289, 52 Cal. Rptr. 53 (1966); Dunzweiler vs. Superior Court, 267 Cal. App. 2d 569, 73 Cal. Rptr. 331 (1968).

The extent of this liberality is demonstrated by the case of Re-Development Agency of the City of Fresno, Inc. vs. Herrold, 86 Cal. App. 3d 1024, 150 Cal. Rptr. (1978), wherein the Court held that if a Motion to amend pleadings is timely made, and if granting of that Motion will not prejudice the opposing party, it is error to refuse permission to amend, and furthermore, where that refusal to amend also results in the party being deprived of a right to assert a meritorious defense,

it is not only error but an abuse of discretion.

While the power of this Court to issue an injunction has specifically been authorized by the Legislature in the California Code of Civil Procedure §§525, et.seq., nonetheless, it is Hornbook Law that the analysis undertaken by the Court in granting such an injunction, as well as the inherent power of the Court to grant such an injunction, is equitable in nature. For these reasons, one clearly valid defense to an injunction is that defense of unclean hands. Cal. Jur. 3d, Injunctions, §17.

Based upon the foregoing, it is respectfully submitted that to allow this amendment to properly reassert the valid defense of unclean hands would be in the furtherance of justice and would not prejudice Plaintiff herein.

For these reasons, it is respectfully requested that this Court grant this Motion and accept for filing the attached proposed Amended Answer.

DATED: December 13, 1982

CONTOS & BUNCH

By BRUCE M. BUNCH

BRUCE M. BUNCH  
Attorney for Defendant  
GERALD ARMSTRONG